

The Interim

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Newsletter

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Back to School Program Lets Legislators Share Experience

The unmistakable signs of fall have arrived: fresh, new school supplies are showing up in the stores, students are lining up for the bus, and the America's Legislators Back to School Program is kicking off! Legislators across the country are heading into classrooms to become involved in the Back to School Program, and Montana legislators can, too.

Sponsored by the Montana Legislative Council and the National Conference of State Legislatures, the program seeks to educate students about the legislative process in a nonpartisan manner. The program gives state legislators an opportunity to:

- engage the next generation in the legislative process by bringing legislators into the classroom to share their experiences;
- address the growing concern about public cynicism and the disinterest of youth in the functions of government; and
- meet personally with young constituents in order to answer their questions, share ideas, listen to their concerns, and impart a greater understanding of the Legislature.

The program is designed to teach young people — the nation's future voters and leaders — what it's like to be a state legislator: the processes, the pressures, and the debate, negotiation, and compromise that are the very fabric of representative democracy. It also builds links between schools and state legislatures.

The program focuses on civic education, but its purpose is not to teach students about the three branches of government or how a bill becomes law. Instead, it's designed to help students understand how legislators try to solve public problems and the complex and sometimes messy process of representative democracy. At the same time, the program gives students an opportunity to talk about their ideas with the legislators who represent them.

Participating in the America's Legislators Back to School Program is easy — legislators may simply contact Montana Back to School Program Coordinators Sonia Gavin or K'Lynn Sloan Harris about taking part in

the program. They'll provide Montana-specific information and materials for legislators to use in classroom visits.

Contact Information

Legislators who have questions, need additional information, or want to visit a classroom to talk about civics may contact the program coordinators by e-mail or phone.

Sonia Gavin: sgavin@mt.gov

K'Lynn Sloan Harris: ksharris@mt.gov

Phone: 406-444-3064

CFHHS to Go On the Road for HJR 16 Study

The Children, Families, Health, and Human Services Interim Committee will tour four state-operated institutions in September as part of its House Joint Resolution 16 study. That resolution directs the committee to study institutions that provide services to individuals with a mental illness, intellectual disability, or chemical dependency.

The committee will travel to Butte on Sept. 16 to tour the Montana Chemical Dependency Center in the morning. Members will visit the Montana Developmental Center in Boulder that afternoon. On Sept. 17, the committee will spend the morning at the Montana State Hospital at Warm Springs and the afternoon at the Montana State Prison in Deer Lodge.

HJR 16 called for a study of the facilities to see if changes to the current system of services could result in more effective treatment. The committee has decided to focus its attention on the mental health services provided by the institutions.

In addition to the tours, committee members will hear presentations from the staff of each facility in order to learn more about the facility itself, the individuals it serves, and the services provided. The committee also will take public comment at each location.

Members will conclude the September meeting by revisiting the HJR 16 study plan to determine whether to expand the amount of committee time devoted to reviewing community-based mental health and developmental disability services.

The committee will meet in the following locations in each community:

- Butte: Conference Room, Montana Chemical Dependency Center, 2500 Continental Way
- Boulder: Administration Building Conference Room, Montana Developmental Center, 310 Fourth Ave.
- Warm Springs: Administrative Annex Classroom A, Montana State Hospital

- Deer Lodge: William K. Kohrs Memorial Library Meeting Room, 501 Milwaukee Ave.

Next Meeting

The committee will meet next on Sept. 16-17 in Butte, Boulder, Warm Springs, and Deer Lodge. The meeting is slated to begin at 9 a.m. on Sept. 16 in the Conference Room of the Montana Chemical Dependency Center, 2500 Continental Drive, Butte. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Economic Affairs Challenges Rules, Adopts Work Plan

Two proposed rules to increase fees charged by state agencies raised concerns at the Economic Affairs Committee meeting Aug. 21, resulting in objections that iced one rule and made the other rule subject to continued committee review.

Also at the meeting, the committee adopted its work plan and heard public comment on topics ranging from workers' compensation to an assistance program that helps troubled medical providers retain their professional licenses.

The committee took a close look at the two proposed administrative rules because of concerns that the state agencies had failed to show that the fee increases were directly tied to an increase in the costs of the related programs.

The committee heard from the Department of Labor and Industry and from a representative of the Montana Petroleum Marketers & Convenience Store Association about a proposed rule to increase fees for testing the meters that are associated with dispensing gasoline, natural gas, and other fuels. Earlier this summer, the committee members had filed a letter raising concerns about the proposed rule and held a meeting to investigate the rule further. The committee voted to retain its objection, which means that the rule as it currently stands cannot be enacted until the day after the next regular legislative session adjourns sine die. (The controlling statutes are 2-4-305 and 2-4-306, MCA.)

The committee also decided to object to a proposed Department of Agriculture rule to increase fees for inspecting fields and facilities related to noxious weed seed free forage. In addition to the question of whether the increase was related to program costs, some committee members also voiced concern that the proposed rule was a type of "end run" to avoid the constraints imposed under Senate Bill 144, which prohibited the department from obtaining grants from the noxious weed special revenue account and established limits

on administrative costs and expenditures. The proposed fee increase will be placed on the committee's Oct. 22 agenda for further explanations from the department.

In other activities, the committee heard from:

- representatives of three insurers that will be selling health insurance policies on the federally facilitated health insurance exchange, also known as a "marketplace." The insurers noted the complicated process of obtaining approval to sell policies on the exchange and explained some of the differences in the costs of the policies that will be sold. Some policies have restrictions on the physicians or hospitals that an insured person can use, while others reflect differing interpretations of the cost and use of health care services in different geographic areas of Montana. (A map of the areas used by the insurers for calculating costs is on the committee website, www.leg.mt.gov/eaic, under the Aug. 21 meeting materials.)
- a representative of a national workers' compensation insurance advisory organization, who reviewed the pricing criteria for workers' compensation premiums and provided data on how Montana premiums, claims frequency, and claims severity fare in relation to neighboring states. Although Montana's premiums have decreased more than the national average, premiums are still eighth-highest in the nation. Claim frequency and claim severity also are high.
- representatives of the Montana Safety Bureau, the federal Mine Safety Health Administration, and the private sector WorkSafeMT program. They proposed various ways of collaborating and trying to foster a culture of workplace safety in Montana to prevent workers from being injured and to try to lower workers' compensation costs;
- representatives of medical providers and medical providers themselves, who described their concerns about a proposal funded by the Legislature to allow the Department of Labor and Industry to run a medical assistance program for dentists, nurses, doctors, and pharmacists with alcohol or drug problems, mental illness, or chronic health conditions. The program allows the providers to retain their licenses while under a strict monitoring program. Currently, the medical assistance program is contracted out to third parties. A committee staff memo questioned whether the department had statutory authority to run the program without approval of the boards. All of those who commented on the proposal agreed that the third-party contract is a good approach. The Department of Labor and Industry promised to scour the budgets of the health care licensing boards to make funds available for the assistance program contracts.

- Labor Commissioner Pam Bucy, who provided an overview of the department as part of the committee's agency monitoring duties. She also provided background information on licensing boards, as did Adam deYong, the Business Standards Division administrator. That division provides staff for the administratively attached licensing boards.

The committee also adopted its work plan and asked that three licensing boards that have potential fiscal problems be invited to the next meeting along with the following licensing boards:

- the Board of Clinical Laboratory Science Practitioners;
- the Board of Radiologic Technologists; and
- the Board of Respiratory Care Practitioners.

As required under 37-1-142, MCA, the boards will explain to the committee why the boards remain necessary for a public purpose and should not be repealed by the Legislature.

The boards with fiscal problems are the Board of Funeral Services, the Board of Hearing Aid Dispensers, and the Board of Private Alternative Adolescent Residential or Outdoor Programs.

These licensing boards and the review of the rule on fee increases related to noxious weed seed free forage inspections will be on the October meeting agenda along with a review of Montana State Fund's structure and finances, including an examination of the Old Fund costs. Other agenda items will include monitoring of the State Auditor's Office and discussion of the fiscal problems at the Diagnostic Laboratory for the Department of Livestock at Montana State University-Bozeman.

Next Meeting

The committee will meet next on Oct. 22 in Room 137 of the Capitol. More information on the meeting will be in the October Interim newsletter and on the committee's website. For questions contact Pat Murdo, committee staff.

Committee Website: www.leg.mt.gov/eaic

Committee Staff: pmurdo@mt.gov or 406-444-3594

ELG to Review Policy Goals, Common Core

The Education and Local Government Interim Committee will take up several items when it meets later this month. The agenda for the Sept. 23-24 meeting includes:

- a review of the Shared Policy Goals and Accountability Measures documents that exist for the K-12 and K-20 education systems as well as the Montana university system;

- an overview and analysis of the process for adoption or amendment of K-12 school accreditation standards and a review of the process related to the adoption of the Montana Common Core Standards;
- updates from the Office of Public Instruction and Montana University System; and
- background on electronic records management and an update on activities already underway in state government on topics related to the House Joint Resolution 2 study of electronic records management by state and local governments.

In addition, the committee will review its proposed final work plan and make any changes before approving the document.

The meeting will be held in Room 137 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Pad McCracken, committee staff.

Committee Website: www.leg.mt.gov/elgic

Committee Staff: padmccracken@mt.gov or 406-444-3595

ETIC Heads to Central Montana for SJR 6 Study

Energy and Telecommunications Interim Committee members will focus this month on the economic impacts of renewable energy requirements, hearing from central Montana business owners, local government officials, and renewable energy developers.

The committee will meet in Harlowton on Sept. 12-13 as it looks at topics related to the Senate Joint Resolution 6 study of the Montana renewable portfolio requirements. SJR 6 requires ETIC to examine the economic and environmental impacts of Montana's renewable energy requirements. The study also includes a review of the impacts the requirement has had on Montana utility customers.

While in central Montana, the committee will visit the 135-megawatt Judith Gap Wind Energy Center. The committee also will hear from Wheatland County businesses and local government officials about how renewable energy development has influenced the local economy. Members will learn about property taxes paid, contributions to state school trust funds, lease payments, construction jobs, and maintenance and operations jobs.

Committee members also will spend much of their time learning more about qualifying small power production facilities. Qualifying facilities are generally 80 megawatts or less with a primary energy source that is renewable. The committee will visit the 9.7-megawatt Two Dot Wind Farm located in Wheatland County near Two Dot, the Martinsdale Wind

Farm located at the Martinsdale Hutterite Colony, and the 9.6-megawatt Gordon Butte wind farm near Martinsdale.

PSC Rule Update

The Public Service Commission will update the committee on its proposal to amend its rules governing qualifying small power production facilities. The PSC's current rule makes standard contracts available to qualifying facilities up to 10 megawatts. The commission is considering a proposed amendment to its administrative rules to reduce that contract eligibility to 100 kilowatts, among other changes. In late June, a group of legislators asked the PSC to conduct an economic impact analysis of the proposed rule changes. The economic impact statement must be completed before final PSC action on the proposed rule. ETIC will have the opportunity to review the statement and determine whether it is sufficient.

Committee members also will begin their examination of green school construction, renovation, operations, and maintenance. Committee members have asked to include so-called "green school" standards in their interim work plan. These standards focus on energy efficiency opportunities in public schools. The committee will also receive an update on interoperability issues in Montana and learn more about a recent survey conducted by the PSC concerning broadband services in Montana.

Next Meeting

The committee meets next on Sept. 12-13 at the Harlowton Kiwanis Youth Center, 207 Third St. N.E. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snwakowski@mt.gov or 406-444-3078

EQC to Look Into Historic Property, Public Land Management

The Environmental Quality Council's work on an array of studies requested by the 2013 Legislature begins in earnest Sept. 11-12 with tours of Reeder's Alley in Helena and several land management projects to the south and west of the Capital City.

Senate Joint Resolution 4

Senate Joint Resolution 4 requested a study of state-owned heritage properties managed by the Montana Heritage Preservation and Development Commission (MHC), including Virginia City, Nevada City, and Helena's Reeder's Alley. As part of this study, the EQC on Sept. 11 will review property in Helena that saw its first development in 1864 in the form of a small cabin to mark a mining claim.

Two structures at the base of Reeder's Alley, known as the Pioneer Cabin and the Caretaker's House, were donated to the State of Montana in 2006; the state had accepted donation of the Reeder's Alley property lying to the south and west of these structures in 2001. Several businesses lease space in the collection of aged brick buildings that Louis Reeder constructed to house miners in 1884. Maintenance of the buildings and the infrastructure in Reeder's Alley presents ongoing challenges to the MHC, which is statutorily required to manage properties "in a manner that protects the properties and encourages economic independence."

Ellen Baumler, Montana Historical Society interpretive historian, will guide the EQC on a tour of the Pioneer Cabin and Reeder's Alley. Elijah Allen, the MHC's director of operations, will be on hand to discuss the commission's administrative responsibilities at the site.

On Sept. 12, Allen will report on the 2013 season at Virginia City and Nevada City. The report will include revenue and expenditure projections, developments in the inventory project for the state-owned artifacts at Virginia City and Nevada City, and maintenance needs and strategies at all of the MHC-managed locations.

Senate Joint Resolution 15

Montana's history with the management of federal land within its borders runs wide and long. From the establishment of the first national park to the south to some of the nation's first forests in the west and north and the first grazing district in the east, many Montanans are familiar with the laws and judicial interpretations involving the public domain.

With more than one-third of Montana's acreage in public ownership and most of that acreage held by the federal government, the 2013 Legislature noted that federal land management has a significant and direct bearing on the state's environment, education funding, economy, culture, wildlife, and the health, safety, and welfare of its citizens.

Much of the information the EQC will review for the Senate Joint Resolution 15 study of federal land management will likely relate to the complex web of laws, court decisions, and financial realities that govern the management of public lands.

But for many Montanans, the management of public land amounts to something more tangible than dictates from a bureaucratic office, a legislative chamber, or a judicial bench. Montana's residents explore public lands on foot, by animal, and by machine. They cut the trees and mine the rock. They hunt the animals and drink the water. When conflicts arise between any of those uses, and many more, those conflicts hit close to home, too.

The Sept. 11 EQC meeting will include perspectives of federal land management from the U.S. Forest Service and the

Bureau of Land Management as well as from a manager of private land who is a member of the Montana Logging Association. Other speakers include a professor and chairman of the Department of Society and Conservation at the University of Montana's College of Forestry and Conservation and a professor at the University of Idaho who is director of the Idaho Forest, Wildlife and Range Policy Analysis Group. Both have studied public land management extensively.

On the afternoon of Sept. 11, the EQC will tour the mountains south and west of Helena to see several land management projects including the Ten Mile Watershed, which provides drinking water to the city.

A major component of SJR 15 is an ongoing survey of counties. Some of the responses will be available for the September EQC meeting and more are expected by the January 2014 meeting.

House Bill 609

The study of Montana's hunting and fishing license system kicked off in August with the convening of a citizens' advisory council established by the Department of Fish, Wildlife, and Parks at the request of the governor. The advisory council and the EQC have been similarly charged by House Bill 609 and the governor to review Montana's license system and make recommendations on changing and simplifying its structure and fees to improve the balance between revenue and expenditures for fish and wildlife management and to improve services and better meet the needs of license buyers.

On Sept. 12, the EQC will review information that the advisory council has already received on FWP's current fiscal situation, license sales trends, the effects of free and reduced-cost licenses, and hunter recruitment and retention. The EQC also will receive a comparison of hunting and fishing licenses and fees in 12 states.

Other Topics

Other updates scheduled for the September meeting include the state water plan, the 2013 fire season, rulemaking on exempt wells, petroleum tank release site closures, the newly appointed State Parks and Recreation Board, damage caused at Bannack State Park by flash flooding, sage grouse and bison management, and the aquatic invasive species program.

Next Meeting

The EQC's Sept. 11-12 meeting will be held in Room 172 of the Capitol. For an agenda and other meeting materials, visit the council's website or contact Joe Kolman, council staff.

Committee Website: www.leg.mt.gov/eqc

Committee Staff: jkolman@mt.gov or 406-444-3747

LJIC to Begin Parole, Family Law Studies

The Law and Justice Interim Committee will begin work this month on studies involving the Board of Pardons and Parole and family law. Members also will pursue committee-selected topics at their Sept. 19-20 meeting.

For the Senate Joint Resolution 3 study of the Board of Pardons and Parole, the committee will learn about the board operations and philosophy, including hearing from current and former board members about their work on the board and parole philosophies. The presentations are designed to give the committee an understanding of the current correctional process in Montana, especially as it relates to parole.

For the Senate Joint Resolution 22 study of family law and alternatives, the committee will hear from a panel of attorneys, state District Court judges, a court clerk, and a standing master who focuses on family law. The panel will help LJIC members identify what works in the current family law system and what causes difficulty for those involved. Pro se litigants, the challenges they pose to the judicial system, and the current resources available to assist them also will be on the agenda.

The committee also requested that the following topics be covered at the September meeting:

- an update on the re-entry initiative undertaken by the Department of Corrections as a result of passage of House Bill 68 this year;
- an update on activities by the Children, Families, Health, and Human Services Interim Committee for the House Joint Resolution 16 study of the state-operated institutions serving people with mental illness, intellectual disabilities, and chemical dependency; and
- an overview by the Montana Department of Justice of the National Instant Criminal Background Check System as it relates to people with mental illnesses and Montana's privacy laws.

In addition, members will discuss whether to take a deeper look at the funding and operation of the Office of the Public Defender as the interim progresses.

Next Meeting

The committee meets next on Sept. 19-20 in Room 102 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Rachel Weiss, committee staff. An agenda for the meeting will be available on the website in early September.

Committee Website: www.leg.mt.gov/ljic

Committee Staff: rweiss@mt.gov or 406-444-5367

Finance Committee to Hear Budget Update

The Legislative Finance Committee will meet on Sept. 26-27 and is tentatively scheduled to discuss updates on matters related to the state budget, including fire suppression costs.

The 2013 Fiscal Year End and 2015 Biennium Update Report will provide a comparison between budgeted data as presented during the 63rd Legislature and actual data from the Statewide Accounting, Budgeting, and Human Resources System for FY 2013. In addition, the report will offer aggregate information on revenue estimates and collections, disbursements and reversions, and an updated general fund balance statement for the 2015 biennium.

Other tentative agenda items include:

- an Information Technology Policy and Project status report;
- information related to the committee's House Joint Resolution 17 analysis of state pay plans;
- reviews of the legislative budgeting process and the financing of local government infrastructure projects; and
- the proposed Legislative Fiscal Division work plan for the interim.

Next Meeting

The committee meets next on Sept. 26-27 in Room 102 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the Legislative Fiscal Division's website or contact Diane McDuffie, committee secretary at 406-444-2063.

Committee Website: www.leg.mt.gov/fiscal

Committee Staff: acarlson@mt.gov or 406-444-2988

Revenue & Transportation Plans October Meeting

The Revenue and Transportation Interim Committee will receive background information in October on its two assigned studies: the Senate Joint Resolution 23 study of the taxpayer appeal process and the Senate Joint Resolution 26 study of the movement of oversize vehicles through the state.

The SJR 23 background information will include an overview of the formal and informal review processes of the Department of Revenue, a summary of the laws governing the independent taxpayer appeal process, and information from the State Tax Appeal Board about hearing procedures and types of cases heard by the board. The committee also will receive a brief introduction to how other states structure the taxpayer appeal process.

The material presented for the SJR 26 study of oversize loads will focus on statutory limits on size, weight, and load, the permitting process for vehicles that exceed these requirements, and an overview of the logistical considerations when moving an oversize load.

The departments of Revenue and Transportation also will provide agency updates as part of the committee's agency monitoring functions. The Department of Revenue report will include a discussion about the Montana Supreme Court's recent decision in *Covenant Investments, Inc. v. State of Montana*, upholding the six-year property tax reappraisal cycle.

The Legislative Fiscal Division will present a 2013 fiscal year end revenue collection report to the committee in support of its revenue-estimating duty.

Other agenda items will be added as the meeting approaches.

Next Meeting

The committee meets next on Oct. 1 in Room 102 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Megan Moore, committee staff.

Committee Website: www.leg.mt.gov/rtic

Committee Staff: memoore@mt.gov or 406-444-4496

SAVA Creates Subcommittee on Combining Elections

A newly created subcommittee of the State Administration and Veterans' Affairs Interim Committee will meet this month to more closely examine election-related laws.

SAVA created the subcommittee at its Aug. 20 meeting, when it revised and adopted its work plan for the Senate Joint Resolution 14 study on combining primary and school elections.

The Subcommittee on Combining Elections will work with stakeholders to identify issues and options and report back to the full committee on whether a bill to combine the elections is feasible. The subcommittee's first meeting will be Sept. 18 in Helena.

SAVA Presiding Officer Dee Brown appointed the following members to the subcommittee: Rep. Bryce Bennett, D-Missoula; Rep. Joanne Blyton, R-Joliet; and Rep. Kathleen Swanson, D-Anaconda.

History of Campaign Laws Examined

At its August meeting, the committee also examined the history of Montana's campaign laws and the establishment of the Office of Commissioner of Political Practices. These laws originated with a 1912 citizen initiative called the Cor-

rupt Practices Act, which passed in the wake of widespread political corruption financed by the so-called "Copper Kings" of Butte.

The Office of Commissioner was established in 1975 and was authorized to hire or retain special prosecutors who, along with county attorneys, could prosecute violations. Under the 1975 law, a four-member committee of legislative leadership appointed the commissioner.

Separation of powers concerns led to a change in 1979 to require that the governor appoint the commissioner and the Senate confirm the appointee. A citizen initiative in 1980 gave the commissioner additional responsibilities related to lobbying and ethics. Certain qualifications and restrictions for appointees were enacted in 2005.

Pension Rule Activity

The attorney for the Public Employees' Retirement Board reported to SAVA that the board voted to repeal an emergency rule concerning the Guaranteed Annual Benefit Adjustment amount that should be assumed for future years as the actuary conducts its annual valuation of Public Employees' Retirement System liabilities. The repeal stemmed from objections by SAVA and the Legislative Finance Committee, as well as further discussion by board members.

The retirement board has instructed its actuary to project liabilities based on both a 1.5 percent GABA, the maximum amount allowed under current law, and a 3 percent GABA, which was the rate in effect prior to the enactment of HB 454. That legislation reduced the GABA for current members and retirees and may be challenged in court.

The committee did not voice further objections and will send a delegation to the board meeting on Oct. 10 to listen to the actuary's preliminary report. The delegation will consist of Sens. Dave Lewis and Larry Jent.

Other Activity

In other action, the committee revised and adopted a study plan for the House Joint Resolution 1 study concerning the Office of the Commissioner of Political Practices. The study will involve a survey of how the 49 other states select the officers, boards, or commissions in charge of state lobbying, ethics, and campaign practices laws. It also will look at how salaries are set for those officers, boards, or commissions.

The committee also:

- withdrew its objection to a Secretary of State rule concerning ballot form and uniformity after the office fixed the rule to more specifically identify where the ballot form guidelines could be found;

- agreed to ask for more information from the Board of Investments about pension fund investment practices and rates of return;
- requested further information from the Department of Administration about the state employee health care clinics; and
- changed its scheduled Oct. 24, 2013, meeting to Oct. 21.

Next Meetings

The SJR 14 Subcommittee on Combining Elections will meet at 9 a.m. on Sept. 18 in Room 102 of the Capitol. The next full committee meeting will begin at 9 a.m. on Oct. 21 in Room 102. For more information on the committee's activities and upcoming meetings, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: www.leg.mt.gov/sava

Committee Staff: sscurr@mt.gov or 406-444-3596

Exempt Wells Before Water Policy Committee

When the Water Policy Interim Committee meets this month, members will broach a topic that occupied them last interim: ground water wells exempt from permits.

The committee also will hear updates on the state water supply and wildfire situation at its Sept. 9-10 meeting in Helena.

WPIC will launch its ditch study with a presentation by University of Montana Associate Professor Michelle Bryan-Mudd, who is director of the university's Land Use Clinic. House Joint Resolution 26 asks the committee to study the intersecting interests of estate owners and ditch owners.

Agenda items on Sept. 9 include a report on efforts by the Department of Natural Resources and Conservation to update the state water plan and discussion of the Brady water supply.

The committee will discuss a proposed administrative rule defining a "combined appropriation" for exempt wells on Sept. 10. Other agenda items that day include:

- an update on the state process for those holding water rights exempt from filing under Senate Bill 355;
- a discussion of an expansion of the Water Court's historic role into permitting and change applications;
- a U.S. Forest Service presentation on forestry projects in municipal watersheds; and
- a discussion of in-stream flow measuring.

The Montana Bureau of Mines and Geology will also give a hydrology demonstration on the Capitol grounds on Sept. 10. A tentative agenda is posted at www.leg.mt.gov/water. The committee will not be hearing a report from the Reserved Water Rights Compact Committee related to the proposed compact with the Confederated Salish and Kootenai Tribes.

Next Meeting

The committee meets next on Sept. 9-10 in Room 172 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Jason Mohr, committee staff.

Committee Website: www.leg.mt.gov/water

Committee Staff: jasonmohr@mt.gov or 406-444-1640

The Back Page

What the Health Exchange Marketplace Means for Employers, Employees

By Pat Murdo, Legislative Research Analyst, Legislative Services Division

Until about midsummer, the Affordable Care Act, or Obamacare, typically triggered a political reaction. But as the Oct. 1 opening day draws closer for the rollout of the health insurance exchanges where some consumers will purchase insurance, the tenor of some meetings about health care reform has become less about politics and more about what must be done to make the exchanges work and how the law will affect individuals and businesses alike. A lot of skepticism, panic, and concern remain, but notebooks, pencils, and calculators are coming out as employers and individuals try to sort through the financial effects of the law.

The Affordable Care Act requires individuals to have insurance coverage, beginning in 2014. In order to help lower-income people obtain health insurance and health care, the law provides federal subsidies for buying insurance and paying for medical care. People with incomes of 100 percent to 400 percent of the federal poverty level will receive help in paying for their monthly insurance premiums, with the payments based on income. People with incomes of 100 percent to 250 percent of poverty also will also receive assistance that will lower their total out-of-pocket costs for medical care. The

subsidies will be provided directly to the insurance company that issues a policy to the person eligible for assistance.

The following information is intended to help employers and employees consider the impact of the Affordable Care Act on their lives in terms of obtaining insurance. The question-and-answer format uses contributions from various experts (and attributes them occasionally), but the final responsibility for errors rests with the author. And fear not, there is little math. Do that on your own.

The following information also is very basic. More complex questions may be answered by visiting one of two websites: the federal government's Affordable Care Act site, www.healthcare.gov, or a new site offered by the Montana State Auditor's Office, www.montanahealthanswers.com.

Questions Employees May Be Asking

Following is a list of some of the questions individuals are asking as they try to figure out how they'll be affected by the law's requirement to have health insurance in 2014 and beyond. Often, there's more than one answer to the question or more than one factor to consider in making a decision related to the question, as these responses will show.

1. I'm an employee who has health benefits now from my employer. What do I need to do? What are my responsibilities for my dependents?

- A. Most likely you need to do nothing regarding your own insurance, unless your employer decides to stop offering health benefits to you and you do not have other coverage through your spouse or parents. If you have health benefits through an employer, a health insurance exchange is not intended for you unless the benefits are not "good enuf" or "cheap enuf," as discussed in Question 10. Your employer must provide you with a notice by Oct. 1, 2013, that discloses whether your policy meets a minimum value required by law (in other words that it's "good enuf" and "cheap enuf.")
- B. Be aware that if your employer offers health insurance for your dependents or spouse and you decline that coverage or if your dependents and spouse are not otherwise covered under other health insurance, you may have to pay a no-coverage penalty on your income tax return if you claim them as dependents or file jointly. See Response C to Question 2.
- C. If your employer decides to stop providing coverage for your spouse or dependents, they most likely will have to obtain insurance to meet the requirements of the law. They could enroll in an employer plan if one is available to them. If not, they could buy insurance through the health insurance exchange.

- D. If you want to buy insurance for a spouse or dependents who are not eligible for employer-sponsored health insurance, you can check the health insurance exchange for individual policies. The exchange calculator will let you know if any of the applicants is eligible for Medicaid, the Healthy Montana Kids Plan, or for subsidies for insurance bought on the health insurance exchange. You may end up with separate insurers for you, your spouse, and your children.

Don't forget your 25-year-old who's living in the basement until getting a job. A child under the age of 26 can remain on your insurance policy or may qualify for a catastrophic policy on the exchange. See Question 11 for more information on applying for policies through the health insurance exchange.

2. I'm an employee whose employer offers health benefits, but I have not participated in the past and do not have health insurance. What are my options?

- A. Unless you are exempt from the individual mandate of the Affordable Care Act (see Response B below), you are responsible for having health insurance, either provided to you by your employer or purchased independently on a health insurance exchange or through the private market. It's important to remember that if your employer provides health care coverage, you will not be able to get subsidies on the health insurance exchange unless the employer's coverage doesn't meet the "cheap enuf" and "good enuf" standards. Also, insurance policies offered on the exchange have to meet certain coverage standards (except for a catastrophic plan available to those under age 30 and certain others). If you buy a policy outside of the exchange, you may find different options, such as a high-deductible plan, that may be more suited to your budget and health status. However, some policies sold outside of the exchange may not fulfill the individual mandate of the Affordable Care Act. If you buy outside the exchange, you should ask an insurance broker if the policy you are considering provides "minimum essential coverage," which is key to avoiding a penalty for failing to meet the individual responsibility mandate.
- B. You might be exempt from the individual mandate if you meet any of the following conditions:
 - » you're an enrolled tribal member;
 - » you can't afford to pay 9.5 percent of your modified adjusted gross income (line 37 of your 1040 tax form) for health insurance;
 - » you earn too little to file a federal income tax form; or

- » you qualify for a hardship exemption. (See Question 4)

C. If you are not exempt from the requirements of the law and you do not obtain health insurance, you'll have to pay a penalty. In 2014, the penalty is the lesser of \$95 for each individual listed on your tax return who is not covered by insurance or 1 percent of your modified adjusted gross income or the cost of a Bronze plan (see [Table 1](#)). The penalty increases in subsequent years.

3. I'm an employee who has health benefits now from my employer, but the cost of the policy is higher than if I bought a policy on the health insurance exchange. Why should I take my employer's health policy?

- A. If you check out the health insurance exchange and find a policy that is cheaper than the insurance your employer provides, you might be tempted to buy on the exchange. Before bailing on the employer-provided insurance, consider how much your employer is paying toward the premium, if anything, and include that in your calculation.
- B. A word of caution if you expect a pay raise because you're saving your employer money by turning down the employer's health insurance. Both you and your employer pay for the monthly premium costs with pre-tax dollars. Because of tax considerations, your employer may be unwilling to negotiate with you to transfer the employer's share of an insurance premium to a boost in your salary. See [Table 2](#) for an employer's calculation tools. And remember, an individual buying health insurance on a health insurance exchange does so with after-tax dollars.
- C. The exchange application form asks if your employer provides health insurance. If you answer honestly, the exchange response is likely to be something like this: "You may be eligible to get quality health insurance through the Health Insurance Marketplace. But based on the information provided, you probably won't qualify to save money on your monthly premiums or out-of-pocket costs...."
- D. If your comparison shopping on the health insurance exchange shows you can get a better deal on the exchange than through your employer's health plan, then you can still purchase an individual or family policy on the exchange. If your employer has more than 50 full-time equivalent employees and you receive a subsidy for buying insurance on the exchange, the employer will pay a penalty beginning in 2015. It is unclear how this is going to be tracked except that the task falls to the Internal Revenue Service.

4. I'm self-employed, unemployed, or not offered insurance by my employer. What are my options?

- A. The health insurance exchange is intended for a person like you. You can:
 - » buy insurance on the exchange. By accessing the health insurance exchange (whether you are just curious or really want to buy insurance), you can discover whether you are eligible for insurance and subsidies or whether you are eligible for Medicaid. (You might fall into a void in Montana in which your income is too low to qualify for subsidies — under 100 percent of the federal poverty level — but you don't meet Medicaid eligibility standards because you're not blind, disabled, 65 years of age or older, pregnant, or an adult with a dependent child.) If you find yourself unable to get subsidies and the charges of a low-cost policy on the exchange are too great, you might qualify for a hardship exemption from the mandate to have insurance. But you might have to file some forms with the U.S. Department of Health and Human Services to obtain the exemption.
 - » buy insurance outside of the exchange. If you choose this option, you may be able to find a policy that meets your needs at a lower cost because these policies don't have to cover some of the medical services that exchange-offered policies must. However, you won't be able to obtain subsidies for a policy purchased outside of the exchange, even if your income would otherwise qualify you for these subsidies.

5. Are my premium costs going to rise?

- A. Maybe. Your age, where you live, and whether you smoke can be factored into the price of insurance policies. In addition, costs could vary based on the level of benefits offered by the insurance plan you buy.
- B. The Affordable Care Act imposes some additional charges on insurance policies, including a \$63 fee per policy per year in 2014 for a reinsurance program to make sure that the requirement for insurers to cover all pre-existing medical conditions does not burden any one insurer too greatly. Insurers may pass the costs of this fee on to consumers.
- C. Your coverage is supposed to have a minimum value, or be "good enough." This may mean that the insurer has added benefits to the policy you'll buy in 2014 that weren't in the policy in previous years. This may cause premium costs to go up.

D. Premium costs may increase for younger people. Insurers typically have based the costs of policies on the experience they've had in paying claims for the people covered by the policies, a process called "underwriting." Older people typically have paid more, because they're heavier users of the health care system. The Affordable Care Act limits the degree to which insurance companies can use underwriting so that all healthy and sick consumers are "pooled" together. This may impact premiums.

E. Offsetting these potential increases is a provision in the Affordable Care Act that requires insurers to limit their administrative costs to either 15 percent or 20 percent of the total premium, depending on the size of the insurer. In addition, competition may put downward pressure on pricing this first year of the exchange, as insurers test the waters under these extensive reforms.

6. I'm a state employee. What do I need to do?

A. A state employee does not need to purchase insurance through the exchange. The state covers the cost of the individual employee's premium, and the plan meets the requirements for minimum value. Thus it's both "cheap enuf" and "good enuf." The plan also covers 100 percent of preventive health care services, as required by the law. If a state worker turns to the exchange to buy policies for his or her dependents, subsidies won't be available for those policies because the state insurance plan provides for coverage of dependents.

Questions Employers May Be Asking

Under the Affordable Care Act, many employers face a penalty if they fail to provide affordable insurance to their employees. Following is a list of some of the questions that employers are asking as they try to figure out whether offering insurance to their employees is a good investment and what avenues exist for selecting policies. Again, there's often more than one answer to the questions below.

7. I'm an employer who offers health benefits to my employees now. What do I need to do?

A. You should first calculate the number of full-time employees your business has because the answer to this question varies depending on whether you're a "small employer," with 50 or fewer full-time equivalent employees, or a "large employer," with more than 50 employees. The law carries no penalties for a small employer who fails to provide health insurance that is neither good enough nor cheap enough. However, employers with more than 50 employees may face penalties in 2015 for not meeting those minimum values.

B. Under the Affordable Care Act, a full-time equivalent employee is one who works 30 hours or more a week. If

you have both full-time employees and part-time employees under this definition, you'll need to figure out how your part-time employees will be counted toward the FTE requirement. And there's a formula for that. First, add up the number of hours worked by all staff who work less than 30 hours. Then, divide that total by 30. A handout from Blue Cross Blue Shield of Montana uses as an example a business with 30 part-time employees who work an average of 20 hours. Those employees would work a total of 600 hours. That number divided by 30 totals 20, and so the business would be considered to have 20 full-time equivalent workers.

8. Based on that calculation, I have 50 or fewer employees. Now what?

A. You can continue to offer the health insurance that you provide now. In addition, before Oct. 1 of this year, provide a notice to your employees describing the insurance and its minimum value. You can get help with this from your insurer, or you can obtain a sample form letter online from the Small Business Administration, at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>. In a presentation to a Montana Business Health Network seminar, Richard Miltenberger of Mountain West Benefits also suggested that employers talk with a broker or employment consultant to determine what "level" of coverage they provide (see metallic levels in [Table 1](#)). Why should you do this? If your employees are curious, they might compare the coverage you're currently offering to the coverage offered to individuals on the exchange. It will be helpful for the employee to compare your coverage with the appropriate metallic value they see on the exchange. It is also helpful to let your employees know that because you as their employer provide "good enuf, cheap enuf" health insurance, the employee is unlikely to qualify for subsidies on the health insurance exchange.

B. You could drop your health insurance benefits and tell employees to go on the health insurance exchange for individuals. Determining the costs to a business of providing health insurance is not simple and involves tax as well as insurance calculations. See [Table 2](#) below for the penalties that businesses face if they don't offer coverage. Other factors come into play, as well. For instance, offering insurance coverage may be a benefit that you want to provide to your employees or an element that you think makes your company more competitive in hiring employees. A good tax accountant or tax attorney can be helpful, if not critically necessary.

C. You could partially drop coverage of health insurance benefits for dependents and cover only employees. Although you might want to do the right thing and help your employees by covering their family members under

one policy and offering a break on group coverage, the simple offer of group coverage means that the spouse or dependents of an employee may become ineligible for subsidies on a health insurance exchange (again provided that the employer's coverage is "good enuf" and "cheap enuf").

D. You could go to a SHOP exchange or marketplace to see if you could get better insurance options. SHOP stands for the Small Business Health Options Program and is designed for employers to determine which qualified health plans they may be able to provide for employees. The SHOP marketplace is at the same online address as the individual health insurance marketplace: www.healthcare.gov. If you use an insurance broker, and the broker represents policies sold by the three qualified health plans in Montana — Blue Cross Blue Shield of Montana, Montana Health Co-Op, or PacificSource Health Plans — that broker can describe policies offered by those insurers both on and off the exchange. If your broker does not represent any of those companies and you want to see what is available on the exchange, you might talk to a "navigator," who is a person hired by an organization funded by a federal grant to provide unbiased information on different qualified health plans. The navigators selected for Montana are the Montana Primary Care Association, Planned Parenthood of Montana, and the Montana Health Network.

E. You may be eligible for a small employer tax credit in 2014. These tax credits are available only for firms with fewer than 25 employees whose average salaries do not exceed \$50,000. An employer may receive a tax credit of up to 50 percent of employer contributions to premiums.

F. If you are a mom-and-pop operation or a sole proprietor, you are ineligible to cover yourself with a policy bought on the SHOP exchange but may be able to buy health insurance there for any employees. For your own insurance, you are eligible to buy policies on the individual health insurance exchange. A mom-and-pop operation with nine or fewer employees may want to get on the waiting list to participate in the Insure Montana program, a state-run program that provides either tax credit assistance for employers who contribute toward health premiums or premium assistance for eligible employees.

9. Based on the FTE calculation, I have more than 50 employees. Now what?

A. For the first year of the exchange, your options are similar to those for employers with 50 or fewer employees: continue to offer insurance, drop insurance, or drop dependents and spouses from insurance. In 2015, penalties may apply either for not providing any health insurance

to employees or providing health insurance that is neither "cheap enuf" nor "good enuf." Responses A and B for Question 8 and [Table 2](#) below offer some considerations for employers as they determine which option is best for them.

B. Employers with more than 50 employees may consider reconfiguring their staffing to either reduce the number of full-time equivalent employees to fewer than 50 or to a level slightly above 50, to result in minimum or no penalties. Although part-timers may add to the determination of whether an employer is large or small, the penalty is based only on workers clocking 30 hours or more. In addition, the penalty does not apply to the first 30 FTE.

C. Consider splitting into two or more smaller companies so each is classified as a small employer.

Questions Employers, Employees May Be Asking

Both employers and employees may have some questions in common, as noted below.

10. What is meant by "cheap enuf" and "good enuf?"

A. These terms are shorthand for affordable coverage that has a minimum value as established by the Affordable Care Act. Affordable means that the premium cost is no more than 9.5 percent of an employee's gross income minus contributions to Social Security and pensions or a 401(k) plan. An insurance plan with minimum value or minimum essential coverage pays at least 60 percent of the total cost of medical services. [Table 3](#) below shows the point at which an insurance policy would be considered unaffordable for a Montana worker making either minimum wage or earning the average salary for all workers in 2008.

11. What do I need to have with me to apply for insurance through an exchange?

A. Prior to going online to www.healthcare.gov or calling a "navigator" (check for a list of these helpers at www.montanahealthanswers.com), gather the following information:

- » Social Security numbers for all individuals for whom you want insurance (or document numbers for legal immigrants);
- » employer and income or W-2 information for those for whom you want coverage;
- » policy numbers for any existing health insurance plans; and
- » Completed "employer coverage tool," which is available in sample form at: https://www.healthcare.gov/downloads/MarketplaceApp_Checklist_Generic.pdf.

Individuals should have all of those items on hand. Employers, however, would only have access to their employees' information for the first two items, rather than the information for the entire household.

12. Who do I call for help?

A. Call? You want a real person? Try this number at the State Auditor's Office: 1-800-332-6148. It's listed for questions on insurance. If you have a computer, try a new website from the State Auditor's Office: www.montanahealthanswers.com. Good luck.

Table 1: Plan Levels Offered on a Health Insurance Exchange/Marketplace

Level/Type	Comparative Cost of Monthly Premiums	Individual's Share of Medical Costs
Bronze	Lowest Cost	40 percent
Silver	Higher than Bronze	30 percent
Gold	Higher than Silver	20 percent
Platinum	Higher than Gold	10 percent
Catastrophic	Lowest Monthly Cost Limited Availability*	Variable**

* Available to individuals under the age of 30 and certain others

** Likely to be similar to plans where most medical costs are not covered until individuals have already paid a certain portion of the expenses; that amount typically is higher than deductibles set for other types of policies.

Table 2: Penalty Calculator for Employers

Option	Penalty	Variables to Consider
No Coverage	\$2,000 per FTE	<ul style="list-style-type: none"> • Applies only to large employers. • Figure out what premiums would cost and the amount that you as the employer are going to contribute toward premiums. • Subtract from that sum the combination of the following: <ul style="list-style-type: none"> » amount by which you would increase employees' pay to "make them whole" for not providing health insurance; » the increased cost for payroll tax on the higher salaries; » the amount you would no longer take for an expense deduction on your corporate (or "S" corp) income taxes if you previously paid for health insurance; and » the penalty expense, which is only on the remaining full-time equivalent employees after the first 30 "free" FTEs.
Unaffordable Coverage	\$3,000 for each FTE receiving a subsidy for buying insurance on the exchange	<ul style="list-style-type: none"> • Applies only to large employers. • An employer is only going to know the employee's take-home pay and not the modified adjusted gross income for the household. • The risk of providing insurance at an unaffordable rate is only high if the majority of employees receive a subsidy on the exchange. • Employers paying higher wages are less likely to be faced with a penalty than those paying lower wages. • The penalty is imposed on any FTE remaining after the first 30 "free" FTEs.
"Cadillac" Coverage	Details Unknown	<ul style="list-style-type: none"> • Applies to all employers. • So-called "Cadillac" plans with richer benefits may result in a penalty under Section 9001 of the Affordable Care Act. • Cadillac plans in 2013 are those that cost \$8,500 for an individual and \$23,000 for a family. • Calculations for future years will be indexed to inflation and by 2018 will be \$10,200 for an individual and \$27,500 for a family. • Exemptions apply. • Penalty will be paid by the insurance issuer, the employer, or the third-party administering the plan.

Source: Blue Cross Blue Shield of Montana presentation, "Health Care Reform and What it Means for You," July 22, 2013, except for the section on "Cadillac" coverage.

Table 3: Calculating Affordability of Coverage

Employee Pay	Gross Income Minus SS and Pension	Level at Which Policy is Unaffordable
Minimum Wage @ \$7.80/hr = \$16,224	\$16,224 - \$1,850 = \$14,374	9.5% of \$14,374 = \$1,366 <i>(The monthly premium would have to be more than \$113.79.)</i>
2008 Average Annual Wage = \$31,928	\$31,928 - \$3,640 = \$28,288	9.5% of \$28,288 = \$2,687.36 <i>(The monthly premium would have to be more than \$223.95.)</i>